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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,908	03/09/2001	Michael Stroble	833970.0002	2601

7590

11/06/2002

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EXAMINER

HENLEY III, RAYMOND J

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 11/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/801,908

Applicant(s)

Michael Strobel, et al.

Examiner

Ray Henley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Sep 30, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-20 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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CLAIMS 1-11 AND 13-20 ARE PRESENTED FOR EXAMINATION

Applicants' Request for Continued Examination (RCE) and Amendment filed September 30, 2002 have been received and entered into the application. The RCE is deemed to be proper and thus examination on the merits is detailed below. As per applicants' amendment, claim 1 has been amended and claim 12 has been canceled. In light of applicants' amendment, the rejections of the claims under 35 U.S.C. § 102(b), as set forth in the previous Office action dated June 28, 2002 at pages 2-4, are withdrawn.

Claim Rejection - 35 USC § 112, Second Paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-11 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 2-11 depend from newly amended claim 1, but fail to be consistent with such amendment which changed claim 1 from being a claim directed to a composition to one directed to a method. Such inconsistency renders the claims indefinite. Appropriate correction is required.

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Also, claims 4 and 16 are directed to “a flavoring agent” but improperly depend from a claim which is not directed to a flavoring agent, but rather to a composition.

Claim Rejection - 35 USC § 103

I Claims 1, 5-11, 13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dondi et al. (U.S. Patent No. 5,624,682), already of record, for the reasons of record as set forth in the previous Office action dated June 28, 2002 at page 4, as applied to claims 1, 5-13 and 17.

Applicants arguments at page 5 of the amendment have been carefully considered, but fail to persuade the Examiner of error in his determination of obviousness.

In particular, applicants have argued that the compositions would not be useful for the treatment of livestock animals because only small amounts of water are disclosed by the patentees and would precipitate out of a large water solution as contemplated by the current invention. However, Dondi et al. do teach “animals” in general as previous pointed out by the Examiner. Applicants’ allegation of precipitation problems has not been established by a showing of fact. Finally, the total volume of the solution is not a claim limitation and thus is not a limitation of any moment.

II Claims 13-20 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Daher (U.S. Patent No. 5,348,745), already of record, for the reasons of record as set forth in the previous Office action at page 5.

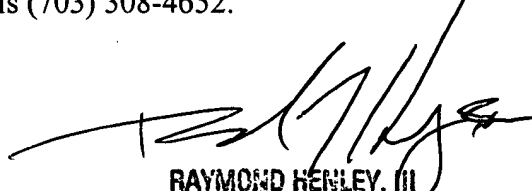
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Applicants' arguments at page 5 of the amendment have been carefully considered, but fail to persuade the Examiner of error in his determination. The arguments are directed to the limitations of claim 1, however, this claim is not rejected over Daher.

Accordingly, for the above reasons, the claims are deemed to remain properly rejected and none of the claims are allowed.

Applicants should note that claims 2-4, to the extent that the Examiner interprets them as depending from a method claim, i.e., claim 1, are not subject to any rejection based on prior art. Neither of the references relied upon by the Examiner would teach or have suggested the limitations as in these claims. In particular, the solution taught by Daher is an intermediate product and would not be administered to a subject for any therapeutic purpose, i.e., the solution is converted into a powder for use in preparing a tablet. Thus, Daher is not applicable to any of claims 1-11. The solution taught by Dondi et al. is intended to be encapsulated and the patentees do not teach or suggest that a flavoring agent should be present. Thus, Dondi et al. is not applicable to claims 2-4.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ray Henley whose telephone number is (703) 308-4652.



RAYMOND HENLEY, III
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